

AMENDED IN SENATE APRIL 23, 1998

AMENDED IN SENATE APRIL 2, 1998

**SENATE BILL**

**No. 2021**

**Introduced by Senator Schiff**

February 20, 1998

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An act to amend Section 13966.01 of the Government Code, to add Section 1202.41 to the Penal Code, and to amend Sections 730.6 and 730.7 of the Welfare and Institutions Code, relating to restitution, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2021, as amended, Schiff. Victims of crime: restitution.

Existing law requires that, when the state has an interest, the State Board of Control shall be given notice and a reasonable opportunity to perfect and satisfy the lien, before a judgment, award, or settlement is satisfied in any action or claim by a victim of a crime to recover damages for injuries.

This bill would require this notice and opportunity to be given before a judgment, award, or settlement is satisfied in any action or claim by a victim of a crime.

Existing law also requires the board to be given, in a prescribed manner, notice of the institution of legal proceedings; *and* settlement, and all other notices that are required by specified law to be given to a judgment debtor, if an action is brought or a claim asserted for damages against a person liable for an injury or death giving rise to an award by the board.

This bill would delete the requirement that the board be given those other notices that are required by specified law to be given to a judgment debtor, and would require the board to be given notice of all hearings, conferences, and proceedings.

Existing law requires the court to order a defendant, including a minor, to make restitution to any victim who has suffered economic loss as a result of the defendant's conduct in an amount established by court order.

This bill would establish a specified ~~2-year~~ 4-year pilot program for the purpose of ~~contracting~~ collaborating with ~~retired~~ judges to amend restitution orders imposed pursuant to those provisions of law. Under the program, the State Board of Control would be required to determine if the cost of holding a hearing on a restitution order is justified if a hearing has not been waived, and to prepare a preliminary report to the Legislature on the outcome of the pilot program by a specified date and a final report on the outcome of the pilot program by a specified date upon the conclusion of the pilot program.

Existing law provides for the imposition of a restitution fine upon a minor based on the minor's present ability to pay, sets the standard for determining whether a court should order a minor to pay full restitution to the victim, requires the minor to pay ordered restitution as a condition of probation, and rebuttably presumes that a custodial parent or guardian is jointly and severally liable for restitution, fines, and penalty assessments payable by a minor, subject to the parent or guardian's ability to pay.

This bill would revise these provisions to refer to the inability rather than ability to pay, specify that inability to pay may be considered only in increasing the amount of a restitution fine in excess of the minimum, and specify that a minor's inability to pay shall not be considered a compelling ~~and~~ or extraordinary reason not to impose a restitution fine or order and shall not be a consideration in determining the amount of the restitution order. *The bill would provide the minor the right to a hearing to dispute the amount of the restitution order, authorize the court to modify the order on its own motion or on the motion of other specified parties, and*



*require the victim to be given notice of the hearing on the motion.* The bill would also provide that unsatisfied portions of restitution orders shall be enforceable after the minor is no longer on probation, specify that restitution orders are enforceable in the manner provided for other specified fines, and require that restitution payments made pursuant to a restitution order be paid to the Restitution Fund if the victim received assistance from that fund, thereby constituting an appropriation as the Restitution Fund is continuously appropriated.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13966.01 of the Government  
2 Code is amended to read:  
3 13966.01. (a) The State of California shall be  
4 subrogated to the rights of the victim to whom cash  
5 payments are granted to the extent of the cash payments  
6 granted. The subrogation rights shall be against the  
7 perpetrator of the crime or any person liable for the  
8 pecuniary loss, including a carrier held liable in  
9 accordance with the provision of a policy of insurance  
10 issued pursuant to Section 11580.2 of the Insurance Code.  
11 (b) The state shall also be entitled to a lien on the  
12 judgment, award, or settlement in the amount of the cash  
13 payments on any recovery made by or on behalf of the  
14 victim. The state may recover this amount in a separate  
15 action, or may intervene in an action brought by or on  
16 behalf of the victim. If a claim is filed within one year of  
17 the date of recovery, the state shall pay 25 percent of the  
18 amount of the recovery that is subject to a lien on the  
19 judgment, award, or settlement, to the victim responsible  
20 for recovery thereof from the perpetrator of the crime,  
21 provided that the total amount of the lien is recovered.  
22 The remaining 75 percent of the amount, and any amount

1 not claimed within one year pursuant to this section, shall  
2 be deposited in the Restitution Fund.

3 (c) The board may compromise or settle and release  
4 any lien pursuant to this article if it is found that the action  
5 is in the best interest of the state or the collection would  
6 cause undue hardship upon the victim. Repayment  
7 obligations to the Restitution Fund shall be enforceable  
8 as a summary judgment.

9 (d) No judgment, award, or settlement in any action  
10 or claim by a victim, where the state has an interest, shall  
11 be satisfied without first giving the board notice and a  
12 reasonable opportunity to perfect and satisfy the lien. The  
13 notice shall be given to the board in Sacramento except  
14 in cases where the board specifies that the notice shall be  
15 given otherwise. The notice shall include the complete  
16 terms of the award, settlement, or judgment and the  
17 name and address of any carrier directly or indirectly  
18 providing for the satisfaction.

19 (e) If the victim, or his or her guardian, personal  
20 representative, estate, or survivors, brings an action or  
21 asserts a claim for damages against the person or persons  
22 liable for the injury or death giving rise to an award by the  
23 board under this article, notice of the institution of legal  
24 proceedings, notice of all hearings, conferences, and  
25 proceedings, and notice of settlement shall be given to  
26 the board in Sacramento except in cases where the board  
27 specifies that notice shall be given to the Attorney  
28 General. Notice of the institution of legal proceedings  
29 shall be given to the board within 30 days of filing the  
30 action. All notices shall be given by the attorney  
31 employed to bring the action for damages or by the  
32 victim, his or her guardian, personal representative,  
33 estate, or survivors, if no attorney is employed.

34 Notice shall include all of the following:

35 (1) Names of all parties to the claim or action.

36 (2) The address of all parties to the claim or action  
37 except for those persons represented by attorneys and in  
38 that case the name of the party and the name and address  
39 of the attorney.

40 (3) The nature of the claim asserted or action brought.

1 (4) In the case of actions before courts or  
2 administrative agencies, the full title of the case including  
3 the identity of the court or agency, the names of the  
4 parties, and the case or docket number.

5 When the victim or his or her attorney has reason to  
6 believe that a person from whom damages are sought is  
7 receiving a defense provided in whole or in part by a  
8 carrier, or is insured by a carrier for the injury caused to  
9 the victim, notice shall include a statement of that fact  
10 and the name and address of the carrier. Upon request of  
11 the board, a person obligated to provide notice shall  
12 provide the board with a copy of the current written  
13 claim or complaint.

14 (f) The state shall pay the county probation  
15 department or other county agency responsible for  
16 collection of funds owed to the Restitution Fund under  
17 Section 13967, as operative on or before September 28,  
18 1994, Section 1202.4 of the Penal Code, Section 1203.04, as  
19 operative on or before August 2, 1995, of the Penal Code,  
20 or Section 730.6 of the Welfare and Institutions Code, 10  
21 percent of the funds so owed and collected by the county  
22 agency and deposited in the Restitution Fund. This  
23 payment shall be made only when the funds are  
24 deposited in the Restitution Fund within 45 days of the  
25 end of the month in which the funds are collected.  
26 Receiving 10 percent of the moneys collected as being  
27 owed to the Restitution Fund shall be considered an  
28 incentive for collection efforts and shall be used for  
29 furthering these collection efforts. The 10 percent rebates  
30 shall be used to augment the budgets for the county  
31 agencies responsible for collection of funds owed to the  
32 Restitution Fund, as provided in Section 13967, as  
33 operative on or before September 28, 1994, Section 1202.4  
34 of the Penal Code, Section 1203.04, as operative on or  
35 before August 2, 1995, of the Penal Code, or Section 730.6  
36 of the Welfare and Institutions Code. The 10 percent  
37 rebates shall not be used to supplant county funding.

38 SEC. 2. Section 1202.41 is added to the Penal Code, to  
39 read:

1 1202.41. (a) There is created within the State Board  
2 of Control a ~~two-year~~ *four-year* pilot program for the  
3 purpose of ~~contracting with retired~~ *collaborating with*  
4 judges to amend restitution orders imposed pursuant to  
5 Section 1202.4 of this code and Section 730.6 of the  
6 Welfare and Institutions Code to the extent that the  
7 victim has received assistance pursuant to Article 1  
8 (commencing with Section 13959) of Chapter 5 of Part 4  
9 of Division 3 of Title 2 of the Government Code.

10 (b) The program shall commence 30 days after the  
11 effective date of this section and shall include restitution  
12 orders imposed by courts in the regional judicial  
13 assignments as determined by the Judicial Council, and  
14 Court Operation Services encompassing the Counties of  
15 Sacramento, San Diego, and Alameda. The State Board of  
16 Control, with the assistance of the Judicial Council, shall  
17 ~~contract with one retired judge~~ *collaborate with judges*  
18 in each of the three participating regional judicial  
19 assignments. If an inmate or ward does not waive his or  
20 her right to attend a restitution hearing for the  
21 amendment of a restitution order, the State Board of  
22 Control shall determine if the cost of holding the hearing  
23 is justified. If the State Board of Control determines that  
24 the cost of holding the hearing is not justified, the  
25 amendment of the restitution order affecting that inmate  
26 or ward shall not be pursued at that time.

27 ~~The~~

28 (c) ~~The~~ State Board of Control shall prepare a  
29 preliminary report to the Legislature on the outcome of  
30 the pilot program no later than one year and 180 days  
31 after the effective date of the ~~two-year~~ *four-year* pilot  
32 program. The board shall prepare a final report on the  
33 outcome of the pilot program no later than 2 years and 180  
34 days after the conclusion of the ~~two-year~~ *four-year* pilot  
35 program.

36 SEC. 3. Section 730.6 of the Welfare and Institutions  
37 Code is amended to read:

38 730.6. (a) (1) It is the intent of the Legislature that  
39 a victim of conduct for which a minor is found to be a  
40 person described in Section 602 who incurs any economic



1 loss as a result of the minor's conduct shall receive  
2 restitution directly from that minor.

3 (2) Upon a minor being found to be a person described  
4 in Section 602, the court shall consider levying a fine in  
5 accordance with Section 730.5. In addition, the court shall  
6 order the minor to pay, in addition to any other penalty  
7 provided or imposed under the law, both of the following:

8 (A) A restitution fine in accordance with subdivision  
9 (b).

10 (B) Restitution to the victim or victims, if any, in  
11 accordance with subdivision (h).

12 (b) In every case where a minor is found to be a person  
13 described in Section 602, the court shall impose a separate  
14 and additional restitution fine. The restitution fine shall  
15 be set at the discretion of the court and commensurate  
16 with the seriousness of the offense as follows:

17 (1) If the minor is found to be a person described in  
18 Section 602 by reason of the commission of one or more  
19 felony offenses, the restitution fine shall not be less than  
20 one hundred dollars (\$100) and not more than one  
21 thousand dollars (\$1,000). A separate hearing for the fine  
22 shall not be required.

23 (2) If the minor is found to be a person described in  
24 Section 602 by reason of the commission of one or more  
25 misdemeanor offenses, the restitution fine shall not  
26 exceed one hundred dollars (\$100). A separate hearing  
27 for the fine shall not be required.

28 (c) The restitution fine shall be in addition to any other  
29 disposition or fine imposed and shall be imposed  
30 regardless of the minor's inability to pay. This fine shall be  
31 deposited in the Restitution Fund, the proceeds of which  
32 shall be distributed pursuant to Section 13967 of the  
33 Government Code.

34 (d) (1) In setting the amount of the fine pursuant to  
35 subparagraph (A) of paragraph (2) of subdivision (a), in  
36 excess of the minimum fine amount, the court shall  
37 consider any relevant factors including, but not limited  
38 to, the minor's inability to pay, the seriousness and gravity  
39 of the offense and the circumstances of its commission,  
40 any economic gain derived by the minor as a result of the

1 offense, and the extent to which others suffered losses as  
2 a result of the offense. The losses may include pecuniary  
3 losses to the victim or his or her family members as well  
4 as intangible losses such as psychological harm caused by  
5 the offense.

6 (2) A minor's inability to pay shall not be considered  
7 a compelling ~~and~~ or extraordinary reason not to impose  
8 a restitution fine. Inability to pay may be considered only  
9 in increasing the amount of the restitution fine in excess  
10 of the minimum. The consideration of a minor's inability  
11 to pay may include his or her future earning capacity. A  
12 minor shall bear the burden of demonstrating his or her  
13 inability to pay.

14 (e) Express findings of the court as to the factors  
15 bearing on the amount of the fine shall not be required.

16 (f) Except as provided in subdivision (g), under no  
17 circumstances shall the court fail to impose the separate  
18 and additional restitution fine required by subparagraph  
19 (A) of paragraph (2) of subdivision (a). This fine shall not  
20 be subject to penalty assessments pursuant to Section  
21 1464 of the Penal Code.

22 (g) In a case in which the minor is a person described  
23 in Section 602 by reason of having committed a felony  
24 offense, if the court finds that there are compelling and  
25 extraordinary reasons, the court may waive imposition of  
26 the restitution fine required by subparagraph (A) of  
27 paragraph (2) of subdivision (a). When a waiver is  
28 granted, the court shall state on the record all reasons  
29 supporting the waiver.

30 (h) Restitution ordered pursuant to subparagraph (B)  
31 of paragraph (2) of subdivision (a) shall be imposed in the  
32 amount of the losses, as determined. The court shall order  
33 full restitution unless it finds compelling and  
34 extraordinary reasons for not doing so, and states them on  
35 the record. A minor's inability to pay shall not be  
36 considered a compelling ~~and~~ or extraordinary reason not  
37 to impose a restitution order, nor shall inability to pay be  
38 a consideration in determining the amount of the  
39 restitution order. A restitution order pursuant to  
40 subparagraph (B) of paragraph (2) of subdivision (a), to





1 the extent possible, shall be of a dollar amount sufficient  
2 to fully reimburse the victim or victims for all determined  
3 economic losses incurred as the result of the minor's  
4 conduct for which the minor was found to be a person  
5 described in Section 602, including all of the following:

6 (1) Full or partial payment for the value of stolen or  
7 damaged property. The value of stolen or damaged  
8 property shall be the replacement cost of like property,  
9 or the actual cost of repairing the property when repair  
10 is possible.

11 (2) Medical expenses.

12 (3) Wages or profits lost due to injury incurred by the  
13 victim, and if the victim is a minor, wages or profits lost  
14 by the minor's parent, parents, guardian, or guardians,  
15 while caring for the injured minor.

16 (4) Wages or profits lost by the victim, and if the victim  
17 is a minor, wages or profits lost by the minor's parent,  
18 parents, guardian, or guardians, due to time spent as a  
19 witness or in assisting the police or prosecution.

20 *A minor shall have the right to a hearing before a judge*  
21 *to dispute the determination of the amount of restitution.*  
22 *The court may modify the amount on its own motion or*  
23 *on the motion of the district attorney, the victim or*  
24 *victims, or the minor. If a motion is made for modification*  
25 *of a restitution order, the victim shall be notified of that*  
26 *motion at least 10 days prior to the hearing on the motion.*

27 (i) A restitution order imposed pursuant to  
28 subparagraph (B) of paragraph (2) of subdivision (a)  
29 shall identify the losses to which it pertains, and shall be  
30 enforceable as a civil judgment pursuant to subdivision  
31 (r). The making of a restitution order pursuant to this  
32 subdivision shall not affect the right of a victim to  
33 recovery from the Restitution Fund in the manner  
34 provided elsewhere, except to the extent that restitution  
35 is actually collected pursuant to the order. Restitution  
36 collected pursuant to this subdivision shall be credited to  
37 any other judgments for the same losses obtained against  
38 the minor or the minor's parent or guardian arising out  
39 of the offense for which the minor was found to be a  
40 person described in Section 602. Restitution payments

1 made pursuant to this subdivision shall be made to the  
2 Restitution Fund to the extent that the victim, as defined  
3 in subdivision (j), has received assistance pursuant to  
4 Article 1 (commencing with Section 13959) of Chapter 5  
5 of Part 4 of Division 3 of Title 2 of the Government Code.

6 (j) For purposes of this section, “victim” shall include  
7 the immediate surviving family of the actual victim.

8 (k) Nothing in this section shall prevent a court from  
9 ordering restitution to any corporation, business trust,  
10 estate, trust, partnership, association, joint venture,  
11 government, governmental subdivision, agency, or  
12 instrumentality, or any other legal or commercial entity  
13 when that entity is a direct victim of an offense.

14 (l) Upon a minor being found to be a person described  
15 in Section 602, the court shall require as a condition of  
16 probation the payment of restitution fines and orders  
17 imposed under this section. Any portion of a restitution  
18 order that remains unsatisfied after a minor is no longer  
19 on probation shall continue to be enforceable by a victim  
20 pursuant to subdivision (r) until the obligation is satisfied  
21 in full.

22 (m) Probation shall not be revoked for failure of a  
23 person to make restitution pursuant to this section as a  
24 condition of probation unless the court determines that  
25 the person has willfully failed to pay or failed to make  
26 sufficient bona fide efforts to legally acquire the resources  
27 to pay.

28 (n) If the court finds and states on the record  
29 compelling and extraordinary reasons why restitution  
30 should not be required as provided in paragraph (2) of  
31 subdivision (a), the court shall order, as a condition of  
32 probation, that the minor perform specified community  
33 service.

34 (o) The court may avoid ordering community service  
35 as a condition of probation only if it finds and states on the  
36 record compelling and extraordinary reasons not to order  
37 community service in addition to the finding that  
38 restitution pursuant to paragraph (2) of subdivision (a)  
39 should not be required.



(p) When a minor is committed to the Department of the Youth Authority, the court shall order restitution to be paid to the victim or victims, if any. Payment of restitution to the victim or victims pursuant to this subdivision shall take priority in time over payment of any other restitution fine imposed pursuant to this section.

(q) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(r) If the judgment is for a restitution fine ordered pursuant to subparagraph (A) of paragraph (2) of subdivision (a), or a restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a), the judgment may be enforced in the manner provided in Section 1214 of the Penal Code.

SEC. 4. Section 730.7 of the Welfare and Institutions Code is amended to read:

730.7. (a) In a case in which a minor is ordered to make restitution to the victim or victims, or the minor is ordered to pay fines and penalty assessments under any provision of this code, a parent or guardian who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable with the minor in accordance with Sections 1714.1 and 1714.3 of the Civil Code for the amount of restitution, fines, and penalty assessments so ordered, up to the limits provided in those sections, subject to the court's consideration of the parent's or guardian's inability to pay. When considering the parent's or guardian's inability to pay, the court may consider future earning capacity, present income, the number of persons dependent on that income, and the necessary obligations of the family, including, but not limited to, rent or mortgage payments, food, children's school tuition, children's clothing, medical bills, and health insurance.

1 The parent or guardian shall have the burden of showing  
2 an inability to pay. The parent or guardian shall also have  
3 the burden of showing by a preponderance of the  
4 evidence that the parent or guardian was either not given  
5 notice of potential liability for payment of restitution,  
6 fines, and penalty assessments prior to the petition being  
7 sustained by an admission or adjudication, or that he or  
8 she was not present during the proceedings wherein the  
9 petition was sustained either by admission or adjudication  
10 and any hearing thereafter related to restitution, fines, or  
11 penalty assessments.

12 (b) In cases in which the court orders restitution to the  
13 victim or victims of the offense, each victim in whose  
14 favor the restitution order has been made shall be notified  
15 within 60 days after restitution has been ordered of the  
16 following:

17 (1) The name and address of the minor ordered to  
18 make restitution.

19 (2) The amount and any terms or conditions of  
20 restitution.

21 (3) The offense or offenses that were sustained.

22 (4) The name and address of the parent or guardian of  
23 the minor.

24 (5) The rebuttable presumption that the parent or  
25 guardian is jointly and severally liable with the minor for  
26 the amount of restitution so ordered in accordance with  
27 Sections 1714.1 and 1714.3 of the Civil Code, up to the  
28 limits provided in those sections, and that the parent or  
29 guardian has the burden of showing by a preponderance  
30 of the evidence that the parent or guardian was either not  
31 given notice of potential liability for payment of  
32 restitution prior to the petition being sustained by an  
33 admission or adjudication, or that he or she was not  
34 present during the proceedings wherein the petition was  
35 sustained by an admission or adjudication and any  
36 hearings thereafter related to restitution.

37 (6) Whether the notice and presence requirements of  
38 paragraph (5) were met.

39 (7) The victim's rights to a certified copy of the order  
40 reflecting the information specified in this subdivision.



1 (c) The victim has a right, upon request, to a certified  
2 copy of the order reflecting the information specified in  
3 subdivision (b).

4 (d) This section does not apply to foster parents.

5 (e) Nothing in this section shall be construed to make  
6 an insurer liable for a loss caused by the willful act of the  
7 insured or the dependents of the insured pursuant to  
8 Section 533 of the Insurance Code.

9 SEC. 5. This act is an urgency statute necessary for the  
10 immediate preservation of the public peace, health, or  
11 safety within the meaning of Article IV of the  
12 Constitution and shall go into immediate effect. The facts  
13 constituting the necessity are:

14 In order to determine an effective means to amend  
15 restitution orders and to hold offenders accountable for  
16 all of the losses incurred by their victims, at the earliest  
17 possible time, it is necessary that this act take effect  
18 immediately.

